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APPELLANT PRO SE:

ANTHONY CANADY
Pendleton, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MATTHEW D. FISHER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY CANADY,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 49A02-0612-PC-1072
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Amy J. Barbar, Magistrate
Cause No. 49G02-0005-PC-73060

June 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Anthony Canady appeals the denial of his petition for post-conviction relief, claiming ineffective assistance of counsel. Specifically, Canady argues that his trial counsel was ineffective because she refused to proffer instructions on lesser-included offenses at Canady's murder trial. Finding no error, we affirm the judgment of the post-conviction court.

FACTS

The relevant facts, as reported in Canady's direct appeal, are as follows:

Freddie Allen and H.T. Taylor, Jr., lived in Allen's home in Indianapolis. Sometime in April of 2000, Canady also began staying in Allen's home. On April 19, 2000, the three men went to the home of their neighbors, Ed and Mary Kendall, who were in the process of renovating their home. Ed, Canady, Taylor and Allen drank while sitting in the Kendall residence. Later in the evening, before returning home, Allen asked who had been in his bedroom closet because his dirty laundry had been moved. He was informed by Taylor and Canady that they moved it so that they could do laundry. Upon returning home, Allen noticed that his shotgun was missing from the bedroom closet where the laundry had been.

While they were drinking on the porch, Ed offered to pay Taylor and Canady \$150 to paint the lower level of his home. Taylor and Canady agreed to paint the lower level of the home but argued about when they would start painting. During the argument, Taylor smacked Canady. Canady later told Allen that, "[Taylor] didn't know who he was f***ing with. That he would f*** him up." After talking with Canady, Allen went back to the Kendall residence and argued with Taylor about when they would finish the laundry. Ed then decided to leave because he wanted to get Mary away from the confrontational atmosphere. As the Kendalls prepared to leave, Allen saw Canady walk around the corner of the house and say to Taylor, "I ain't no punk, motherf***er. . . You don't be putting your hands on me." Taylor walked toward Canady and pushed him in the throat. Canady then fired the shotgun from a few feet away, hitting Taylor in the abdomen. Canady put the shotgun down his pants and ran away from the house. Allen and the Kendalls jumped into the Kendall's [sic] car and drove down the road in order to get to a pay phone to call for help.

Canady v. State, No. 49A02-0201-CR-38, slip op. at 2-3 (Ind. Ct. App. Dec. 23, 2002). The

State charged Canady with murder, and following a jury trial on November 14, 2001, Canady was found guilty as charged. Thereafter, on December 12, 2001, Canady was sentenced to fifty-five years of incarceration. Canady appealed to this court, claiming insufficiency of the evidence. On December 23, 2002, we affirmed Canady's conviction. Id.

Canady filed a petition for post-conviction relief on November 3, 2003, claiming ineffective assistance of counsel. Specifically, Canady alleged that his trial counsel was ineffective because she failed to "conduct proper discovery, understand the facts of the case and offer lesser-included instructions." Appellant's App. p. 90-93.

At the post-conviction hearing that commenced on August 16, 2006, Canady testified that he had informed his trial counsel, Angela Dow-Davis, before trial, that he had shot Taylor and had asked her to request instructions on lesser-included offenses, but that she had refused to do so. Canady presented no other witnesses in support of his petition. The post-conviction court denied Canady's petition, and he now appeals.

DISCUSSION AND DECISION

I. Standard of Review

As we consider Canady's argument that the post-conviction court improperly denied his petition, we observe that the petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5); McCarty v. State, 802 N.E.2d 959, 962 (Ind. Ct. App. 2004). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Id. On review, we will not reverse the judgment unless the

evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Post-conviction procedures do not afford petitioners with a “super appeal.” Richardson v. State, 800 N.E.2d 639, 643 (Ind. Ct. App. 2003). Rather, they create a narrow remedy for subsequent collateral challenges to convictions that must be based upon grounds enumerated in the post-conviction rules. Id.; see also P-C.R. 1(1).

II. Ineffective Assistance of Counsel

We review claims of ineffective assistance of counsel based upon the principles enunciated in Strickland v. Washington, 466 U.S. 668 (1984). Specifically,

[a] claimant must demonstrate that counsel’s performance fell below an objective standard of reasonableness based on prevailing professional norms, and that the deficient performance resulted in prejudice. Prejudice occurs when the defendant demonstrates that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” A reasonable probability arises when there is a “probability sufficient to undermine confidence in the outcome.”

Grinstead v. State, 845 N.E.2d 1027, 1031 (Ind. 2006) (quoting Strickland, 466 U.S. at 694).

Although the two parts of the Strickland test are separate inquiries, a claim may be disposed of on either prong. Williams v. State, 706 N.E.2d 149, 154 (Ind. 1999). Strickland declared that the “object of an ineffectiveness claim is not to grade counsel’s performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed.” 466 U.S. at 697.

We further note that counsel is given wide discretion in determining strategy and tactics, and, therefore, courts will accord these decisions deference. Timberlake v. State, 753 N.E.2d 591, 603 (Ind. 2001). A strong presumption arises that counsel rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. Isolated omissions or errors, poor strategy, or bad tactics do not necessarily render representation ineffective. Stevens v. State, 770 N.E.2d 739, 747 (Ind. 2002). The burden is on the petitioner to establish that some action or inaction on the part of trial counsel had no strategic purpose. Clark v. State, 597 N.E.2d 4, 11 (Ind. Ct. App. 1992).

In this case, Canady maintains that his trial counsel was ineffective because she failed to tender instructions on the lesser-included offenses of voluntary manslaughter, involuntary manslaughter, and reckless homicide. Appellant's Br. p. 5. At the hearing, Canady supported this claim only through his self-serving testimony, which the post-conviction court was not obliged to credit. Moreover, Canady maintained his innocence throughout the trial, claiming that he was not the shooter. Indeed, Dow-Davis pursued a trial strategy suggesting that the actual shooter was Allen, who implicated Canady as a way of avoiding prosecution himself. More specifically, Dow-Davis argued that no witness—except for Allen—had seen Canady at the scene of the shooting. She also pointed out that other witnesses had observed Allen in the area. Appellant's App. p. 32. In our view, this defense strategy was reasonable, and it undermines Canady's claim at the post-conviction stage that he had informed his trial counsel that he had actually shot Taylor but that he did not intend to kill him.

Finally, Canady did not produce his trial counsel to testify at the post-conviction hearing. As a result, it was reasonable for the post-conviction court to infer that Canady's counsel would not have corroborated the allegations of ineffective assistance of counsel. Dickson v. State, 533 N.E.2d 586, 589 (Ind. 1989). Under these circumstances, we conclude

that Canady failed to demonstrate that his trial counsel was ineffective. Therefore, Canady's request for relief was properly denied.

The judgment of the post-conviction court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.